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(iii) Services to implement a contract after it has been entered into by the parties thereto, such as handling documentation problems or contract disputes, would not constitute acts "to obtain a contract."

(iv) Payments of any kind to a person who has acted as a selling agent to obtain a contract, including payments for services that may be performed in connection with such contract which in themselves are not services to obtain a contract, are prohibited.

(2) A commission paid or to be paid to any agency, including a corporation, owned or controlled by the participant or the government of the destination country is not eligible for financing.

(3) A payment made to any agent, broker, consultant or other representative of the participant or importer is not eligible for financing. This limitation applies to ocean transportation brokerage commissions which exceed 2½ percent of the freight financed.

(4) For ocean transportation, in addition to this paragraph, see also § 17.14(j).

(5) If a payment is made in violation of paragraph (c) of this section, CCC may demand dollar refund of the entire amount financed by CCC under the contract.

(6) For supplier reporting requirements, see also § 17.12.

(7) A payment to any agent of a participant or importer is prohibited in the purchasing of commodities.

(8) An address commission or payment is prohibited.

(d) *Brand names.* Brand names are not required to be shown on packaged commodities. If, however, a brand name is used, it must be a bona fide U.S. brand. The container or attached label must show the name and U.S. business address of the supplier or the manufacturer. Any reference on the container or attached label to foreign addresses of suppliers or foreign brand names is prohibited and will make the sale ineligible for financing. If the markings on the shipping container include a brand name, such brand name must be identical with the brand name on the unit container.

[51 FR 47409, Dec. 31, 1989, as amended at 54 FR 21931, May 22, 1989; 56 FR 3970, Feb. 1, 1991; 56 FR 50809, Oct. 9, 1991]

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§ 17.9 Notice of sale procedures (tobacco and cotton).

The notice of sale procedures for tobacco and cotton are contained in appendix A of the regulations and the purchase authorization.

§ 17.10 Notice of sale procedures (commodities other than tobacco and cotton).

(a) *Submission of notice of sale.* The supplier shall, immediately upon making a firm sale, telephone a notice of sale to Public Law 480 Operations Division, FAS, (202) 720-5780.

(1) A sale is considered firm under the regulations when the supplier has been notified by the importer of an award, even though the contract is conditioned on approval by FAS of the price; the supplier; the selling agent, if any; conformance of the sale to the provisions of the purchase authorization; and responsiveness of the offer to the IFB terms.

(2) The supplier shall not withhold the notice of sale because of the existence of contract provisions which make a contract conditional on the occurrence of certain events, i.e., on approval of the price by FAS, on the receipt of acceptable letter(s) of credit, or receipt of delivery instructions.

(3) Each notice of sale shall cover only a single sale contract. If a sale is made under two or more purchase authorizations, separate notices of sale shall be submitted for each purchase authorization.

(4) If the supplier fails to furnish a notice of sale within 5 calendar days after the date of sale, CCC has the right to refuse to finance the sale.

(5) The following information must be included in the notice of sale. (Contracts containing options for the items listed in this paragraph (a)(5) are acceptable only as provided in paragraph (a)(5)(vii) or the purchase authorization.)

(i) Purchase authorization number.

(ii) Name and address of supplier.

(iii) Date and time of sale. (See § 17.11(b)(2).)

(iv) Country to which export is to be made (destination).

(v) Name of importer.

(vi) Contract quantity expressed in the contract unit and in the quantity

unit in which the commodity normally trades.

(vii) Contract tolerance, if any, expressed in percentage, but not in excess of 5 percent more or less. This tolerance must be at buyer's option and must include any loading tolerance. If the contract does not provide a tolerance, show "No tolerance."

(viii) Price per contract unit and per quantity unit in which the commodity normally trades.

(ix) Coast or port of export (e.g., East coast, West coast, Gulf coast, Great Lakes port) or Canadian transshipment point in the case of bulk grain.

(x) Delivery period specified in the contract.

(xi) Delivery terms (f.o.b., f.a.s., etc.).

(xii) Complete commodity description.

(xiii) Complete packaging description and packaging material specifications if export is other than in bulk.

(xiv) Supplier's contract number, sale number, or order number, if any.

(xv) Name and address of selling agent (supplier's agent) if any. If none, show "None."

(xvi) Import license number when required by the purchase authorization.

(xvii) Any other terms of the contract between the supplier and importer not specifically provided for in this paragraph (a)(5) which would affect the delivery of the commodity to be exported.

(xviii) Any additional information requested by the purchase authorization.

(b) *Sale approval.* (1) Public Law 480 Operations Division, FAS, will notify the supplier by telephone as to whether it has been determined on the basis of the information submitted in the notice of sale:

(i) That the price is approved for financing;

(ii) That the supplier and the selling agent, if any, are approved under the program;

(iii) That the sale conforms to the provisions of the purchase authorization; and

(iv) That the offer is responsive to the terms of the IFB.

(2) The supplier shall prepare Form FAS-359 (or CCC-359), "Declaration of Sale," and shall mail or otherwise deliver it to Public Law 480 Operations

Division, FAS, promptly as soon as FAS has provided the CCC Registration Number to the supplier.

(3) The supplier shall enter on the Declaration of Sale form the same information as provided in paragraph (a)(5) of this section. Each Declaration of Sale form covers only a single sale contract. The supplier shall submit the Declaration of Sale form in an original and 4 copies, and it must be signed by the supplier or the supplier's authorized representative.

(4) USDA will return two copies of the Declaration of Sale form to the supplier, signed for the General Sales Manager by an authorized official, confirming the telephonic approval given as provided in paragraph (b)(1) of this section.

(5) Declaration of Sale forms are available from Public Law 480 Operations Division, FAS, USDA, Washington, DC 20250-1033. Telephone (202) 720-5780.

(c) *Sale disapproval.* (1) Public Law 480 Operations Division, FAS, will notify the supplier by telephone and telegraph when a sale is disapproved for financing. The related contract between the supplier and importer shall, for purposes of financing, be considered null and void.

(2) On receipt of a notice of disapproval, the supplier shall promptly notify the importer.

(d) *Contract delivery period.* Price approval is limited to exports made during the delivery period stated in the notice of sale or any amendment thereto submitted to Public Law 480 Operations Division, FAS, even though the purchase authorization may authorize a final delivery date later than that stated in the sale. If the supplier cannot complete delivery on or before the terminal delivery date of the contract delivery period, the supplier shall submit a notice of contract amendment as provided in paragraph (e) of this section. If the supplier fails to comply, § 17.17(d) of the regulations shall apply.

(e) *Contract amendments.* (1) The supplier shall submit a notice of each contract amendment to the Director, Public Law 480 Operations Division, FAS/EC, by telephone or telegraph immediately after the amendment to the contract is made. This includes not

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only any change in the contract delivery period or any other terms and conditions of the contract as provided in the information given in the original notice of sale or any amendment thereto, but also any change in any other terms and conditions of the contract.

(2) If a notice of an amendment is made by telephone, the supplier shall confirm immediately in writing (by telegraph).

(3) The supplier shall include only amended items pertaining to a single sale in one amendment notice.

(4) The notice of contract amendment must contain the following:

(i) A request that USDA approve an amendment to the specifically identified sale contract between the Government of (country) and (commodity supplier).

(ii) A statement of what the amendment consists of (as, extension of delivery period through (date)) and a detailed explanation of the reasons for the amendment.

(iii) A statement that the contract amendment has been agreed to by both buyer and seller.

(5) Any amendment to a contract for which FAS has given price approval subjects the terms of the contract, as amended, to reexamination by FAS for the purpose of financing under Public Law 480.

(6) Public Law 480 Operations Division, FAS, will notify the supplier by telegraph and telephone as to whether the amendment is approved or disapproved.

(7) Any amendment must be consistent with the provisions of the purchase authorization and the regulations and must otherwise be acceptable to Public Law 480 Operations Division, FAS.

(8) The supplier shall furnish a copy of the USDA telegraphic approval of the amendment with other documentation submitted to obtain payment.

(9) If the supplier fails to furnish notice of a contract amendment to Public Law 480 Operations Division, FAS, within 5 calendar days after the date of such amendment, CCC has the right to refuse to finance the sale or to finance such portion of the contract price or contract quantity as it may determine

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to be in the interest of the U.S. Government.

(Approved by the Office of Management and Budget under control number 0551-0005)

[51 FR 47409, Dec. 31, 1986, as amended at 54 FR 21931, May 22, 1989; 60 FR 62705, 62706, Dec. 7, 1995]

§ 17.11 Commodity price provisions.

(a) *USDA price approval.* In order for a sale to be eligible for CCC financing, the commodity price must be approved by USDA. (See §§ 17.9 and 17.10).

(b) *Maximum price.* (1) The supplier's sales price may not exceed the prevailing range of export market prices as applied to the terms of sale at the time of sale, as determined by USDA.

(2) The "time of sale," unless otherwise defined for specific commodities in appendix A of this subpart or the purchase authorization, means

(i) For commodities purchased under an Invitation for Bids, the date and time specified in the IFB for submission of offers; or

(ii) For all other commodities, the date as of which the sales price is established in or under the contract between the importer and the supplier.

(iii) For contract amendments for all commodities, the "time of sale" means the date of any amendment if the amendment in any manner affects the sale price as determined by USDA.

(3) If USDA is unable to ascertain the prevailing range of export market prices for a specific commodity, USDA will determine a maximum export market price, representing the top of the range of export market prices, for the commodity at the time of sale for the time and place of delivery provided for in the contract. In so determining a maximum export market price USDA will use, as needed, available domestic or export market information for the same or other quality descriptions, packagings, locations, and dates; will apply appropriate market differentials and other factors as would be reflected in the export market price at the time of sale for the time and place of delivery; and will take into account CCC export sale prices when appropriate.

(4) When the purchase authorization provides for a maximum price, expressed in dollars and cents or computed on a stated basis, the supplier's